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Application No.: 09/715,586

Inventor(s): Peter W. Hamilton, et al.

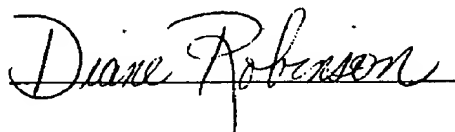
Filed: November 17, 2000

Docket No.: 5922R2C

Confirmation No.: 5737

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Application No. : 09/715,586
Inventor(s) : Peter Worthington Hamilton
Filed : November 17, 2000
Art Unit : 1771
Examiner : Victor S. Chang
Docket No. : 5922R2C
Confirmation No. : 5737
Customer No. : 27752
Title : Improved Storage Wrap Material

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Reply Brief is filed in response to the Examiner's Answer of September 20, 2007, and the appeal from the decision communicated in the Office Action mailed on November 7, 2006. A timely Notice of Appeal was filed on February 1, 2007.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

Related US patent application serial number 09/716,740, is currently under appeal.

Related US patent application serial number 10/701,039 has had the rejection of its claims affirmed on appeal. Appellant is not aware of any other related proceedings or appeals.

STATUS OF CLAIMS

Claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103 and 105-108 are rejected.

Claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103 and 105-108 are appealed.

Claims 2-8, 13, 19-40, 42-46, 53, 59-65, 67-80, 82-94, 96, and 104 are canceled.

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A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No Amendment has been filed after the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

According to independent claim 41, the invention comprises a storage wrap material. The material comprises a sheet of non-porous material having a first side and a second side. The first side comprises an active side which exhibits an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user. The active side further comprises an adhesive disposed continuously thereon. The material is linerless, such that activation of the active side requires no removal of components of the material. The active side is activatable by a tensile force. The material is sufficiently flexible to conform readily to a desired surface and has sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause the material to break contact with the desired surface. See the specification at page 4, lines 30-34; page 5, lines 1-2; page 6, lines 30-34; page 8, lines 7-17; page 34, lines 12-17; Figure 1.

According to independent claim 95, the invention comprises a storage wrap material. The material comprises a sheet of non-porous material having a first side and a second side. Substantially all of the first side comprises an active side which exhibits an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user. The active side further comprises an adhesive disposed continuously thereon. The material is linerless, such that activation of the active side requires no removal of components of the material. The active side is activatable by a tensile force. The material is sufficiently flexible to conform readily to a desired surface and has sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause the material to break contact with the desired surface. . See the

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specification at page 4, lines 30-34; page 5, lines 1-2; page 6, lines 30-34; page 8, lines 7-17; page 34, lines 12-17; Figure 1.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. The rejection of claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103 and 105-108 under 35 USC §103(a) as being unpatentable over Sanders (US 5,344,693) in view of Appellant's admitted prior art.

ARGUMENTS

1. The rejection of claims 1, 9-12, 14-18, 41, 47-52, 54-58, 66, 81, 95, 97-103 and 105-108 under 35 USC §103(a) as being unpatentable over Sanders (US 5,344,693) and Appellant's admitted prior art is appealed. The combination of cited references fails to support a *prima facie* case of obviousness under 35 USC §103(a) at least by failing to teach or suggest each of the limitations of the invention as set forth in the claims and by setting forth a combination without providing any reasonable expectation of success for the combination. Those limitations which are not explicitly taught or suggested by the references alone, or in combination, cannot be said to be inherently present in the structures disclosed by the references. One combination of features from the cited combination lacks any support that the combination could succeed. The rejection should be overturned.

Appellant submits that taken as a whole, the *Sanders* reference cannot be seen as providing support for a teaching or suggestion of the limitation that the sheet be activated by a tensile force.

The Examiner provides that since by his argument the cited combination renders the claimed structure obvious, the combination may be deemed to inherently possess all the claimed limitations of the invention. To render the claimed invention obvious the prior art references must teach or suggest each of the limitations claimed, or the limitation must be inherently present in the disclosed structures. Here the Examiner proclaims the invention to be obvious absent any teaching or suggestion of at least one claim limitation

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and then deems the missing limitation to be inherent based upon the proclamation of obviousness.

The legal standard for inherency as a basis for the rejection of a claimed invention requires that for a limitation to be inherently present in a cited reference, or combination of references, the limitation must be necessarily present in the disclosed structure. In this particular instance there is no actual disclosed structure only a speculative combination made by the Examiner.

References must be taken as a whole. The *Sanders* reference provides that:

The invention is characterized(sic) in that spacing means each having a non-adhesive contactable surface and are non-divergent relative one to another in normal use of the component so as to inhibit contact between the said surface and the said other surface. (col 1, line 66 – col. 2, line 2)

and,

Accordingly, it is an object of the present invention to provide a means of spacing a substance carried on a surface of a substrate from another surface in such a manner as to prevent unintentional contact between the substance and the other surface, the substance and the other surface being contactable one with another only by deforming the substrate and/or the other surface. (col. 1 lines 50-56).

The Examiner has chosen to interpret “non-divergent in normal use” as activatable by a tensile force. Appellant submits that none of the structures disclosed in the reference are described as capable of concurrently being activatable by a tensile force while maintaining non-divergent spacing means.

The Examiner maintains the argument that the limitation of being activatable by the application of a tensile force need not be addressed as it does not constitute a limitation. The Examiner points to pages 5-6 of the Final Office Action mailed 11-7-06 as providing the reasoning for this argument. The cited portion of the Office Action offered in support provides only that the limitation “is clearly optional”. The Examiner provides that it is unseen how the tensile activation force limitation renders a structure that is distinct from those disclosed in *Sanders*. Appellant submits that the disclosed structures of *Sanders* are not capable of concurrently, and necessarily, having non-divergent spacing means and being activatable by a tensile force.

There is no basis for a determination that the limitation is inherently present in the speculative combination of features from references. There is no teaching or suggestion

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of each limitation of the invention as set forth in the claims. There is no *prima facie* case of obviousness under 35 USC §103(a).

There is no likelihood of success in making the combination. The Examiner provides that this combination may be made and has a reasonable likelihood of success as each of the references is from the same field of endeavor. Appellant submits that there is no precedent for the position that every enumerable combination of every limitation disclosed in all the references in a particular field of endeavor may be successfully made. Yet, this is the position the Office takes through the Examiner's position that the proposed combination satisfies the requirement of having a reasonable likelihood of success simply because the references used as the source of the combined limitations in the combination are from the same field of endeavor.

The *Sanders* reference provides only that the substance and surface may contact each other by deforming either the substrate, the surface, or both. The nature of the deformation and the forces causing this deformation are not described. Nothing in the *Sanders* reference teaches or suggests that the application of a tensile force to the substrate will successfully lead to contact between the substance and the surface.

The Examiner argues that monolayer cling film may be combined with the teachings of *Sanders*, with the result providing a teaching of all the limitations of the invention as claimed. Appellant submits that this combination is improper in that there is no reasonable expectation of success that such a combination may be produced. The flexible nature of cling film, which is the aspect of the invention for which cling film is added to the combination, arises from the monolayer nature of cling film. The Examiner argues that this nature may be sufficiently modified that the resultant film will be stiff enough to retain an embossed structure, may additionally be modified by the addition of spacing means from the *Sanders* reference, and yet will retain all of the flexibility which is derived from its original unmodified structure.

The Examiner has chosen to begin with monolayer cling film, imbue it with a myriad of physical properties it does not possess on the basis that these properties are

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present in the field of endeavor, and not disturb any of the properties needed to support the rejection.

Appellant submits that there is no support other than the speculation of the Examiner that this combination can be achieved and will possess all of the limitations of the invention as claimed. There is further nothing provided to support the contention that the cling film upon which the Examiner has based the combination may be altered from an inactive to an activated state by the action of any force. There is no reasonable likelihood of success in the suggested combination of references. The combination fails to support a *prima facie* case of obviousness under 35 USC §103(a).

SUMMARY

In view of all of the above, it is respectfully submitted that a *prima facie* case of obviousness as required by 35 USC §103(a) has not been established. The cited combination of references does not teach or suggest each of the limitations of the invention as claimed. The standard for finding a limitation inherently present is not whatever the Examiner feels is reasonable to deem present in support of a rejection. The absent limitations are not necessarily present in the cited combination to support a determination of inherency. Neither is there a reasonable expectation of success that the specific combination set forth by the Examiner can successfully be achieved. The combination fails to establish or support a *prima facie* case of obviousness under 35 USC §103(a). Appellant respectfully requests that the rejection be overturned.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY



Signature

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Date: November 16, 2007

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CLAIMS APPENDIX

1. A storage wrap material according to Claim 81, wherein the adhesion peel force after activation by a user is sufficient to form a continuous seal against a target surface.
9. The storage wrap material of Claim 1, wherein said active side exhibits an adhesion peel force of at least about 1 ounce per inch width after activation by a user.
10. The storage wrap material of Claim 1, wherein said active side may be selectively activated in discrete regions by a user.
11. The storage wrap material of Claim 1, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.
12. The storage wrap material of Claim 1, wherein both said first side and said second side comprise active sides of said material.
14. The storage wrap material of Claim 1, wherein said active side includes a pressure sensitive adhesive.
15. The storage wrap material of Claim 1, wherein said sheet of material comprises a polymeric film material.
16. The storage wrap material of Claim 15, wherein said polymeric film material is selected from the group consisting of: a substantially translucent polymeric film material and a substantially transparent polymeric film material.
17. The storage wrap material of Claim 1, wherein said active side comprises a plurality of three dimensional non-adherent protrusions extending outwardly from said sheet of material and a pressure sensitive adhesive surrounding said non-adherent protrusions, said adhesive having a thickness less than the height of said non-adherent protrusions before activation.

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18. The storage wrap material of Claim 1, wherein said sheet of material is clingless and exhibits no adhesion peel force prior to activation by a user.

41. A storage wrap material comprising: a sheet of non-porous material having a first side and a second side, said first side comprising an active side exhibiting an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to activation by a user, said active side further comprising an adhesive disposed continuously thereon, wherein said sheet of material is linerless, such that activation of said active side requires no removal of components of said sheet of material, wherein said active side is activatable by a tensile force, said sheet of material being sufficiently flexible to conform readily to a desired surface and having sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause said sheet of material to break contact with such a desired surface.

47. The storage wrap of Claim 41, wherein said tensile force is required to be at least about 0.80 pounds per inch of strip width to activate said active side.

48. The storage wrap of Claim 41, wherein said tensile force is exerted in a direction substantially parallel to said sheet of material.

49. The storage wrap material of Claim 41, wherein said active side exhibits an adhesion peel force of at least about 1 ounce per inch width after activation by a user.

50. The storage wrap material of Claim 41, wherein said active side may be selectively activated in discrete regions by a user.

51. The storage wrap material of Claim 41, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

52. The storage wrap material of Claim 41, wherein both said first side and said second side comprise active sides of said material.

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54. The storage wrap material of Claim 41, wherein said active side includes a pressure sensitive adhesive.

55. The storage wrap of Claim 41, wherein said sheet of material comprises a polymeric film material.

56. The storage wrap material of Claim 55, wherein said polymeric film material is selected from the group consisting of: a substantially translucent polymeric film material and a substantially transparent polymeric film material.

57. The storage wrap material of Claim 41, wherein said active side comprises a plurality of three dimensional non-adherent protrusions extending outwardly from said sheet of material and a pressure sensitive adhesive surrounding said non-adherent protrusions, said adhesive having a thickness less than the height of said non-adherent protrusions before activation.

58. The storage wrap material of Claim 41, wherein said sheet of material is clingless and exhibits no adhesion peel force prior to activation by a user.

66. A storage wrap material of Claim 41, wherein said active side when activated forms a bond with a target surface, said bond being selected from one or more groups consisting of: a discontinuous bond, a permanent bond, a refastenable bond, a resealable bond and a releasable bond.

81. A storage wrap material according to Claim 41 wherein the adhesion peel force after activation by a user is sufficient to form a seal against a target surface.

95. A storage wrap material comprising a sheet of non-porous material having a first side and a second side, substantially all of said first side comprising an active side, said active side comprising an adhesive disposed continuously thereon, said active side exhibiting an adhesion peel force after activation by a user that is greater than an adhesion peel force exhibited prior to said activation by a user, wherein said active side is activatable by a tensile force, wherein said

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sheet of material is linerless, such that activation of said active side requires no removal of components of said sheet of material, said sheet being sufficiently flexible to conform readily to a desired surface and having sufficiently small resiliency that it does not exert undue restorative forces that would tend to cause said sheet of material to break contact with such a desired surface.

97. The storage wrap material of Claim 95, wherein said active side may be selectively activated in discrete regions by a user.

98. The storage wrap material of Claim 95, wherein said active side may be activated by compression against a target surface.

99. The storage wrap material of Claim 95, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

100. The storage wrap material of Claim 95, wherein both said first side and said second side comprise active sides of said material.

101. A storage wrap material according to Claim 95, wherein said active side when activated forms a bond with a target surface, said bond being selected from one or more of the group consisting of: a discontinuous bond, a permanent bond, a refastenable bond, a resealable bond and a releasable bond.

102. A storage wrap material according to Claim 95, wherein the adhesion peel force after activation by a user is sufficient to form a seal against a target surface.

103. A storage wrap material according to Claim 102, wherein the adhesion peel force after activation by a user is sufficient to form a continuous seal against a target surface.

105. The storage wrap material of Claim 103, wherein said active may be selectively activated in discrete regions by a user.

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106. The storage wrap material of Claim 103, wherein said active side may be activated by compression against a target surface.

107. The storage wrap material of Claim 103, wherein said adhesion peel force after activation is sufficient to form a barrier seal against a target surface, said seal exhibiting barrier properties at least as great as those of said sheet of material.

108. The storage wrap material of Claim 103, wherein both said first side and said second side comprise active sides of said material.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

Related US patent application serial number 09/716,740, is currently under appeal. No decision has been rendered in this appeal as of this date.